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**OBSERVATIONS**

**ON THE**

**FIFTH ARTICLE**

**OF THE**

**TREATY WITH AMERICA;**

**&c. &c. &c.**

**[ Price 6d. ]**



# OBSERVATIONS

ON THE

FIFTH ARTICLE

OF THE

TREATY WITH AMERICA:

AND ON

The Necessity of appointing a JUDICIAL EN-  
QUIRY into the MERITS and LOSSES

OF THE

AMERICAN LOYALISTS.

Printed by Order of their AGENTS.

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## ADVERTISEMENT.

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**T**HERE is nothing which the Board of Agents for the American Loyalists would more carefully avoid; than giving offence to any person, whatever may be his rank or character, either on this or the other side of the Atlantic. Conscious of the duty we owe to those we represent, and sensibly affected with their present distress, we cannot entertain a thought of lessening the chances they may be supposed to have under the stipulations in the treaty, of any relief from the American States. On their account, as well as on that of the nation, we rather sincerely wish, that it was in our power to assist them in every measure which affords the least prospect of obtaining a restitution of their property, than to throw out even probable conjectures which might possibly tend to retard or obstruct it.

**BUT**

BUT knowing that there is a considerable number of these meritorious and unfortunate men; who, though they lately possessed all the happiness which independent affluence could bestow, are now reduced to a state scarcely above want; and others who are living on the benevolence of strangers; and persuaded that they cannot receive any benefit from the Treaty, nor, upon any ground of reason, look for a restitution of their property from the American States; and that a delay of that justice, which all men allow is due to them from the Nation, must daily increase the weight and variety of their distress, we hold ourself bound, on their behalf, to submit the following observations, and state of facts, to the candid and humane consideration of Parliament.

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# OBSERVATIONS

ON THE

## FIFTH ARTICLE

OF THE

### TREATY WITH AMERICA, &c,

**T**HERE are several descriptions of Loyalists mentioned in the Treaty with America:

I. "REAL British subjects \*," meaning, as is conceived, all those who were not resident in the Colonies

\* This expression seems to have been adopted by the American Commissioners, to point out those Americans who *formerly* were British subjects, and who, they contend, are not so *now*; having, by some act, lost their political relation to the British State. It is natural to conceive, that under this distinction they mean, that all persons who were resident in America at the time of the Declaration of Independence, have not been since that time real British subjects, although they were so before; as, by their residence within, and their receiving



Colonies at the time, or since the declaration of Independence, and yet own property in them.

2. PERSONS who were resident within the British lines, and *had not borne arms* against the United States; and,

3. PERSONS who *had borne arms* against them.

PERSONS of the first and second descriptions, it is stipulated in the treaty, shall be recommended by the Congress to the several States for a restitution of their property; and therefore it may be supposed impossible to ascertain what is, or will be, due from Government to the Loyalists, claiming a compensation for their losses, until the result of those recommendations shall be known: but in order to judge of the weight of this supposition, it ought to be considered, how far the States, under the present circumstances of

receiving the protection of, the States, after they were established, they became *their* subjects, and *lost all* political connection with the Sovereignty of Great Britain. In this light the States have considered every person residing in America since their usurpation, and have accordingly exercised all the powers of sovereignty over them. Unless this be the meaning of the expression, it can have none; because it must be allowed, that before the Declaration of Independence, all the Americans were "real British subjects," and must be so yet, unless that act of the Congress, and the late ratification of it by the British Government, have dissolved their political Connection with it.

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the property confiscated, can restore it, should they be so disposed. It must be acknowledged, that where the State has retained the right and possession, it may, if it pleases, order restitution. But where the property has been *bona fide* sold and appropriated to the public use by virtue of its own authority, a restitution of the *identical* property must be extremely difficult, if not impracticable. For the laws, under the sanction of which the property of the Loyalists has been sold, direct, that the sales shall be made under the *seal* of the State; and the property sold is guaranteed to the purchasers, *free from all claims and incumbrances whatever*. Under such circumstances, are not the Loyalists, whose property has been confiscated and sold, deserving objects of the *immediate consideration and justice of the British Government*?

THE conduct of the States, in respect to the Loyalists, has been variant. In some, the property confiscated has been sold by the State under its great seal, and warranted to the purchasers; and the proceeds have been appropriated to the public use. In others, a part has been sold, and a part leased for a term of years, and the rents only actually applied to the use of the State; and in others, a part has been sold, a part mortgaged, and a part remains in the possession of the relatives of the person attainted.

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HAD a restitution of the property confiscated been made a previous condition of American independence, and had the territory claimed by the United States, which was at the date of the treaty in the possession of the British arms, been retained as cautionary pledges for the performance of the condition, the injured Loyalists would have been, in some measure, though inadequate to their losses, provided for; because the States would have been, in that case, obliged by their public faith, as well as by their public interest, to restore the identical *property confiscated*, or the *value of it*. But as the sovereign authority of the States has been indefinitely and unconditionally ratified by an act of the British Government, no such obligation subsists: on the contrary, the laws of the usurpation which attainted the persons, and confiscated the estates of British subjects, and which before were *void in themselves*, are, by the same act that ratified the independence, become *valid and perfectly established*. The Loyalists, who are subject to those attainders and confiscations, can therefore of right, and in justice, look up *only to Great Britain* for a compensation. In this case they humbly conceive, that, by the essential obligations established by the social compact, the British Government has become the security for their indemnification, and having purchased peace with the property of the attainted Loyalists, is bound,

bound, by the principles of moral, as well as of political justice, to ensure it to them.

THE preceding observations shew, how little expectation even the Loyalists of the first and second description, whose property has been confiscated and *sold*, can reasonably entertain of a restitution; and when the circumstances of those of the third are candidly considered, it will appear that any hope of restitution or compensation whatever must be delusive and vain. For the recommendations of the Congress, in respect to them, is not for a fair and just restitution of their property. It is indeed stipulated, in the treaty, that they shall have the "liberty to go to the " United States, and there to remain twelve " months unmolested in their *endeavours* to obtain restitution;" and it is further agreed, that " the Congress shall recommend to the States, " that their estates shall be restored to them, they " refunding the *bona fide* price which the purchaser may have paid." But this is so far from affording to the Loyalists the least prospect of relief, that it is an insult to their feelings, and a mockery of their misfortunes. For it is these unfortunate men who have uniformly opposed and obstructed, for years, the great object of the usurpers; and who, in the course of the war, have put many of them to death. The implacable

resentment of their surviving friends and relatives is naturally to be expected, more especially as it is well known, that many hundred Loyalists have already been put to death, merely on account of the assistance given to the British Generals. It is therefore impossible for the Loyalists, against whom such resentment subsists, even "to go to America," to use their "endeavours" to repurchase their estates, unless they can prepare their minds to meet with fortitude *every insult, and even death itself*. Besides, where are men, who have forfeited all they possessed on earth, to find money to repurchase their property. There is no provision for it in the Treaty, nor is it possible for them to procure it elsewhere; and until they can procure the money, what success can they possibly promise themselves in such an application?

BUT let us suppose, for argument sake, that the Loyalists have the money, where is the benefit of paying the value for their own property? Will they not act with more wisdom and prudence in keeping their money, and residing among friends, than in crossing the Atlantic, in order to throw themselves into the power of their unrelenting and triumphant enemies, subjecting themselves to insults, and perhaps to death itself? Were it possible for men of generous minds to do an act so humiliating to all that is noble in human nature,

nature, a sense of their own danger, and the duty of self-preservation, would forbid it.

SHOULD it be here objected, that some estates have been sold *under the real value*, the answer is, that though this may be the case in one or two of the Colonies, it is otherwise in most of them. And even where it is the fact, in a variety of instances it will be found, that the immediate purchaser under the State has sold it to another for the *full value*; and, in like manner, the second purchaser has sold it to a third. Besides, when the nature of the application to repurchase the property, with the answers which will be probably made by the possessor, are candidly weighed, this objection must vanish.

THE Loyalist, who *has borne arms* against the State, is to apply to the possessor of his property to sell it at the price he had given for it. What will be the natural answer of the possessor? The same which every Englishman, holding an estate under the British Government, would make on the like occasion. "I have bought your  
" estate at a public sale, and given more than  
" any other bidder. It was sold under the *seal*  
" of the State, and the *faith* of government;  
" and the whole people of this society are my  
" guaran-

“ guarantees. I have *bona fide* paid the confederation money into the public exchequer, and therefore I will neither give it up to you, nor the State.” Should the Loyalists reply, “ You have bought a great bargain ;” will not the possessor rejoin, “ I know it, and for that very reason no man should have it at the price I gave for it, even if I had not expended considerable sums of money in repairs ; and much less a man who is *my enemy*, and at this moment stands adjudged a *traitor* to my country ?”

Thus it is evident, that there is not even the semblance of provision made for persons of their description ; for the recommendation respecting them, cannot be in any degree beneficial ; nor can they, in all the variety of arguments, find one which gives them a reasonable hope or possibility of relief, *but in the justice of the British Parliament*. In this, as they have great reason, they humbly trust, and that it will not be delayed on account of any uncertainty in the events which relate to persons of the first and second descriptions. For they beg leave to suggest, that before a due enquiry into the merits and losses of the *third* description can be concluded, the ultimate resolutions of the American States must be perfectly known in respect to the *first* and *second*.



THE Loyalists, desirous only that national justice may be strictly administered on this occasion, and that no imposition may take place on their fellow-subjects in Great Britain, humbly trust, that a commission, vested with the complete powers of *judicial enquiry*, will be established under the authority of Parliament, to proceed immediately on an examination of the merits and claims of the third description of Loyalists, with powers to take into their consideration, all such descriptions of men who have been called on by their Sovereign, under the authority of Parliament, to defend its supreme rights; and who have, in consequence of their obedience, suffered an attainder of their persons, and a confiscation of their estates.

IN a case so complex, it seems almost needless to intimate the necessity of such an enquiry. It is necessary to ascertain *immediately* the merits and losses of the third description of Loyalists, who have no chance of relief from the stipulations of the Treaty, although they have the strongest claim on the society. It is necessary to decide upon the merits and losses of others, whose estates have been confiscated and *sold* on account of their loyalty. It is necessary to discriminate between the Pretender (if any such there be) and the real Loyalist. Indeed it is impossible to conceive, how justice can be done either to the nation



in general, or the Loyalists in particular, without such enquiry.

In cases similar, the practice of Parliament has been different. Where one or a few persons only have suffered, the proofs have been received, and referred to the Committee of Supplies : but where numbers have been concerned, and the case has been perplexed with claimants of different descriptions and degrees of merit, the rule has been to establish, by act of Parliament, a commission, vested with full powers of *legal and judicial enquiry*, into the loyalty, sufferings, and losses of the several claimants. This was done in the year 1710, in the cases of Nevis and St. Christopher's, whose inhabitants had suffered by the depredations of the French. In the year 1718, in the case of the Loyalists, whose property had been destroyed during the preceding rebellion in Scotland and Lancashire by the rebels and the royal army ; and in other cases, which it is needless to mention, when the nature of the present case so manifestly points out the necessity of such enquiry.

WE know it has been suggested as a reason against the enquiry, that should it be immediately adopted, " It will tend to render the States more indifferent about complying with the stipulated recommendations of the Congress, and to prevent

vent their making that restitution to the Loyalists which they might otherwise do." Upon this suggestion we cannot help observing, that it is founded on the following mistaken and absurd principles:

1. THAT the humanity and consideration of the States will be greater towards their *enemies*, than those of Great Britain towards her *friends*.

2. THAT the States will act from principles of greater wisdom and sounder policy than Great Britain, by purchasing over even their *enemies* to their interest; while Great Britain, in order to avoid complying with the dictates of natural and national justice, drives from her society *her most valuable and faithful subjects*.

3. THAT the States will be humane, liberal, and merciful to its enemies, while the Parliament will be cruel and unjust to its friends; and that if Parliament will not be *just* in fulfilling the inviolable obligations of civil society to its own faithful subjects, who, on its special command, have particularly distinguished themselves by their fidelity and zeal in the cause of their country, that the States, from motives of humanity, will *mercifully pardon* the men thus unjustly and shamefully cast out by Great Britain, although they stand attainted by their own laws for a steady  
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opposition to their independence. These suppositions are so far from doing either *honour* or *justice to the British nation*, and the *evident intentions of Parliament*, that they must be altogether unfounded.

4. Let it be further considered, that it is impossible for the States to conceive that the Parliament does not mean to make a just compensation to those Loyalists to whom the States shall not make restitution: for his Majesty has been graciously pleased, in a Speech to his Parliament, to declare, that "a *due* and *generous* attention ought to be shewn to those who have relinquished their property or possessions, from the motives of loyalty and attachment to this country:" and the House of Commons, in their Resolution and Address to his Majesty, have likewise declared, that "they feel the *regard due from this nation* to every description of men, who, with the risk of their lives, and the sacrifice of their property, have distinguished their loyalty, and have been conspicuous for their fidelity during a long and calamitous war."

This Speech, and this Address, have long since been before the American States; and therefore, they can never imagine that a British Senate can desert the principles of national justice and honour thus fully acknowledged, so far as not to, carry its own resolution, at all events, into strict execution, in fa-

vour of those who have fought its battles, and sacrificed their all in defence of its rights. Hence we may safely conclude, that they will act from the same motives of policy, whether the enquiry proposed be immediately instituted or postponed. For the enquiry cannot tell them more of the upright and humane intentions of Parliament towards these unhappy men, than his Majesty's Speech, and what has passed in both Houses of Parliament, have already told them.

FROM this plain and unadorned state of facts, we trust every man of candour will allow, that although there may be a chance that some of the Loyalists of the *first* and *second* description may receive a restitution of some part of their property from the States, yet that those of the *third*, who have borne arms against the United States, cannot, with the least degree of reason, hope for any benefit whatever from the stipulations of the treaty; and that they can look no where else for relief but to *the justice and liberality* of the British Government: and therefore, that while no benefit can accrue to the Public from a delay of the enquiry proposed, *the principles of national justice, honour, and humanity, loudly demand it.*

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